

## **Contract Clauses BI-001 through BI-025**

### **DEFINITIONS (NOV 2004) (BI-001)**

(a) "Head of the agency" (also called "agency head"), including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) "Commercial Item" means a product or a service (e.g., items, supplies, materials, components) sold or traded to the general public in the course of conducting normal business operations at established catalog or market prices.

(d) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

*(End of clause)*

### **NONAPPROPRIATED FUND INSTRUMENTALITY (NOV 2004) (BI-002)**

The Nonappropriated Fund Instrumentality (NAFI), which is party to this contract, is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR BY REASON OF THIS CONTRACT. This contract is NOT subject to The Contract Disputes Act of 1978.

*(End of clause)*

### **COVENANT AGAINST CONTINGENT FEES (NOV 2004) (BI-003)**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the NAFI shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

*(End of clause)*

### **PROTECTING THE NAFI'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT (NOV 2004) (BI-004)**

(a) The Government suspends or debar Contractors to protect the Government/NAFI's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the NAFI's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

*(End of clause)*

#### **MATERIAL REQUIREMENTS (NOV 2004) (BI-005)**

(a) *Definitions.* As used in this clause—

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

*(End of clause)*

#### **COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK (NOV 2004) (BI-006)**

The Contractor will be required to (a) commence work under this contract within seven calendar days (unless otherwise specified within this contract) after the date of receipt by him of notice to proceed, (b) to prosecute work diligently, and (c) to complete the entire work, ready for use not later than the time specified in the terms of the contract. The time stated for completion shall include final clean up of the premises.

*(End of clause)*

#### **TIME EXTENSIONS (NOV 2004) (BI-007)**

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

*(End of clause)*

#### **CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (NOV 2004) (BI-008)**

(a) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The NAFI reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The NAFI has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The NAFI may reject nonconforming supplies with or without disposition instructions. The NAFI may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The NAFI shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. NAFI failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the NAFI, for nonconforming supplies. Inspections and tests by the NAFI do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(b) Assignment. The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Excusable delays. The Contractor shall be liable for default in cases of delayed performance unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the NAFI in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(e) Invoice.

(1) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

- a. Name and address of the contractor.
- b. Invoice date.
- c. Contract number or other authorization for supplies delivered, services performed (including order number and contract line item number).
- d. Description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.
- e. Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government/NAFI bills of lading.
- f. Name and address of contractor official to whom payment is to be sent (must be the same as that on the contract or on a proper notice of assignment).
- g. Name (where applicable), title, phone number, mailing address of person to be notified in event of defective invoice.
- h. Any other information or documentation required by the contract (such as evidence of shipment). Invoices shall be prepared and submitted in duplicate (one copy shall be marked "original") unless otherwise specified.

(2) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97-177, as amended by P.L. 100-496):

- a. A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;
- b. Payment shall be considered made on the date on which check for such payment is dated;

c. Payment terms (e.g., "net 20") offered by the contractor will not be deemed a "required payment date"; and

d. The following periods of time will not be included:

(i) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils and food products prepared from edible fats or oils); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(3) If the NAFI makes payment by Electronic Funds Transfer (EFT) (see applicable contract clause). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(f) Patent indemnity. The Contractor shall indemnify the NAFI and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(g) Payment. Payment shall be made for items accepted by the NAFI that have been delivered to the delivery destinations set forth in this contract. The NAFI will make payment in accordance with the Prompt Payment clause.

(h) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the NAFI upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the NAFI at the destination specified in the contract, if transportation is f.o.b. destination.

(i) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(j) Termination for the NAFI's convenience. The NAFI reserves the right to terminate this contract, in whole or in part, when it is in the best interest of the NAFI in accordance with AR 215-4. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(k) Termination for cause. The NAFI may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the NAFI, upon request, with adequate assurances of future performance. In the event of termination for cause, the NAFI shall not be liable to the

Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the NAFI for any and all rights and remedies in accordance with the terms of the contract and governing regulations. If it is determined that the NAFI improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(l) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the NAFI upon acceptance, regardless of when or where the NAFI takes physical possession.

(m) Warranty. The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and to not limit any rights afforded to the NAFI by any other clause of this contract.

(n) Limitation of liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the NAFI for consequential damages resulting from any defect or deficiencies in accepted items.

(o) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(p) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, and Other Compliances.

(3) The clause entitled Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Form #\_\_\_\_\_.

(8) Other documents, exhibits, and attachments.

(9) The specification.

*(End of clause)*

**CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (NOV 2004) (BI-009)**

(a) The Contractor agrees to comply with the clauses in this paragraph (a), which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items by NAFIs (*Contracting Officer shall check as appropriate*):

\_\_\_ (1) \_\_\_, Prohibition of Segregated Facilities.

- \_\_\_ (2) \_\_\_. Equal Opportunity (E.O.11246).
- \_\_\_ (3) \_\_\_. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212).
- \_\_\_ (4) \_\_\_. Affirmative Action for Workers with Disabilities (29 U.S.C.793).
- \_\_\_ (5) \_\_\_. Buy American Act—Balance of Payments Program—Supplies (41 U.S.C.10a–d).
- \_\_\_ (6) \_\_\_. Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.
- \_\_\_ . Alternate I of above.
- \_\_\_ . Alternate II of above.
- \_\_\_ (7) \_\_\_. Trade Agreements Act.
- \_\_\_ (8) \_\_\_. Restriction on Certain Foreign Purchases.
- \_\_\_ (9) \_\_\_. Mandatory Information on Electronic Funds Transfer.

(b) The Contractor agrees to comply with the clauses in this paragraph (b), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items by NAFIs, or components (*Contracting Officer shall check as appropriate*):

- \_\_\_ (1) \_\_\_. Service Contract Act of 1965, As Amended (41 U.S.C.351, et seq.).
- \_\_\_ (2) \_\_\_. Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C.206 and 41 U.S.C.351, et seq.).
- \_\_\_ (3) \_\_\_. Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C.206 and 41 U.S.C.351, et seq.).

(End of clause)

#### **INVOICES (NOV 2004) (BI-010)**

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

- (1) Name and address of the contractor.
- (2) Invoice date.
- (3) Contract number or other authorization for supplies delivered, services performed (including order number and contract line item number).
- (4) Description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.

(5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government/NAFI bills of lading.

(6) Name and address of contractor official to whom payment is to be sent (must be the same as that on the contract or on a proper notice of assignment).

(7) Name (where applicable), title, phone number, mailing address of person to be notified in event of defective invoice.

(8) Any other information or documentation required by the contract (such as evidence of shipment). Invoices shall be prepared and submitted in duplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97-177, as amended).

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which check for such payment is dated;

(3) Payment terms (e.g., "net 20") offered by the contractor will not be deemed a "required payment date"; and

(4) The following periods of time will not be included:

(i) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils and food products prepared from edible fats or oils); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(5) If the NAFI makes payment by Electronic Funds Transfer (EFT) (see applicable contract clause). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

*(End of clause)*

#### **EXAMINATION OF RECORDS (NOV 2004) (BI-011)**

(a) The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in (a) above, in all subcontracts.



*(End of clause)*

**INSURANCE-WORK ON A GOVERNMENT INSTALLATION (NOV 2004) (BI-012)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract, in no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the NAFI's interest shall not be effective (1) for such period as the laws of the States in which the contract is to be performed prescribed at (2) until 30 days after the insurer of the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of the clause, including this paragraph (c), in subcontracts under the contract that requires a work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least five days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance meeting the requirements of paragraph (b) above, for each subcontractor.

*(End of clause)*

**ORDER OF PRECEDENCE (NOV 2004) (BI-013)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

*(End of clause)*

**RESERVED (NOV 2004) (BI-014)**

**RESERVED (NOV 2004) (BI-015)**

**ORDERING (NOV 2004) (BI-016)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from \_\_\_\_\_ through \_\_\_\_\_ *[insert dates]*.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the NAFI deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

*(End of clause)*

#### **ORDER LIMITATIONS (NOV 2004) (BI-017)**

(a) *Minimum order.* When the NAFI requires supplies or services covered by this contract in an amount of less than \_\_\_\_\_ *[insert dollar figure or quantity]*, the NAFI is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of \_\_\_\_\_ *[insert dollar figure or quantity]*;

(2) Any order for a combination of items in excess of \_\_\_\_\_ *[insert dollar figure or quantity]*; or

(3) A series of orders from the same ordering office within \_\_\_\_\_ days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract, the NAFI is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within \_\_\_\_\_ days after issuance, with written notice stating the Contractor's intent not to furnish the item (or items) called for and the reasons. Upon receiving this notice, the NAFI may acquire the supplies or services from another source.

*(End of clause)*

#### **DEFINITE QUANTITY (NOV 2004) (BI-018)**

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The NAFI shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The NAFI may

issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and NAFI's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ *[insert date]*.

*(End of clause)*

#### **REQUIREMENTS (NOV 2004) (BI-019)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the NAFI's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the NAFI all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The NAFI may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the NAFI shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the NAFI activity or activities specified in the Schedule.

(d) The NAFI is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the NAFI urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the NAFI may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and NAFI's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ *[insert date]*.

*(End of clause)*

#### **Alternate I**

(c) The estimated quantities are not the total requirements of the NAFI activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the NAFI shall order

from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may furnish within its own capabilities.

#### **Alternate II**

(g) The requirements referred to in this contract are for items to be manufactured according to NAFI specifications. Notwithstanding anything to the contrary stated in the contract, the NAFI may acquire similar products by brand name from other sources for resale.

*(End of clause)*

#### **INDEFINITE QUANTITY (NOV 2004) (BI-020)**

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the NAFI, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The NAFI shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The NAFI may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and NAFI's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ *[insert date]*.

*(End of clause)*

#### **OPTION TO EXTEND SERVICES (NOV 2004) (BI-021)**

The NAFI may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

*(End of clause)*

#### **OPTION TO EXTEND THE TERM OF THE CONTRACT (NOV 2004) (BI-022)**

(a) The NAFI may extend the term of this contract by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*; provided, that the NAFI shall give the Contractor a preliminary written notice of its intent to extend

at least 60 days before the contract expires. The preliminary notice does not commit the NAFI to an extension.

(b) If the NAFI exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed \_\_\_\_\_ (months)(years).

*(End of clause)*

#### **NOTICE TO THE NAFI OF LABOR DISPUTES (NOV 2004) (BI-023)**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

*(End of clause)*

#### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (NOV 2004) (BI-024)**

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any work week unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the NAFI. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the NAFI until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in

*(End of clause)*

#### **DAVIS-BACON ACT (NOV 2004) (BI-025)**

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit, which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

*(End of clause)*